IN THE

Supreme Court of the United States

October Term, 1942. No. 428

O. M. TATE, JR., TRUSTEE IN BANKRUPTCY OF POST AND COMPANY, a co-partnership consisting of FRED S. POST, MARY POST WILLIAMS, HELEN POST MORRIS and MRS. FRANK H. POST (MARTHA L. POST),

Petitioner

vs.

ROSE McCABE HOOVER,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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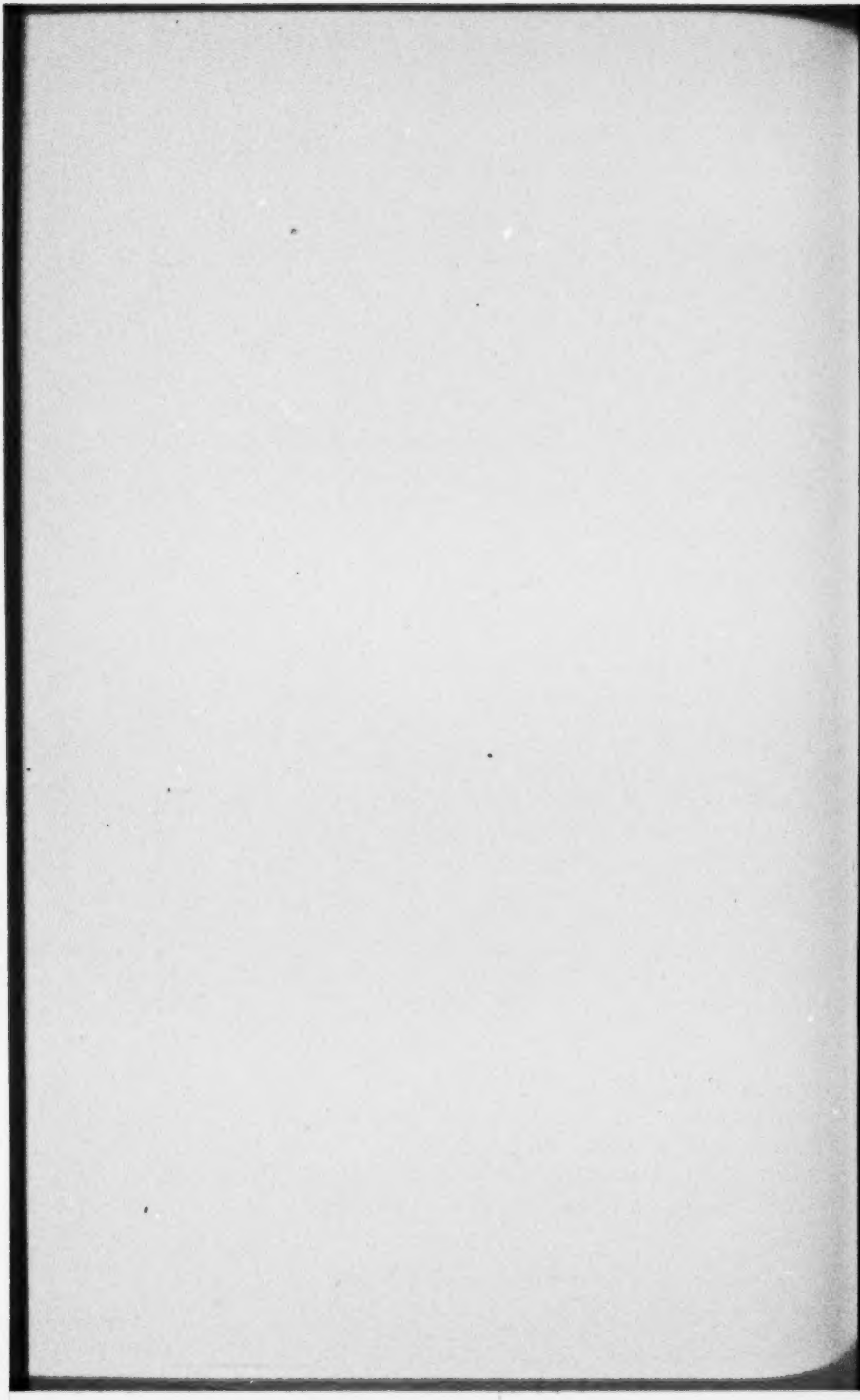

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

To the Honorable the Chief Justices and the Associate Justices of the Supreme Court of the United States:

Your petitioner, O. M. Tate, Jr., Trustee in Bankruptcy of Post and Company, a co-partnership consisting of Fred S. Post, Mary Post Williams, Helen Post Morris and Mrs. Frank H. Post (Martha L. Post), respectfully prays this Court for the issuance of a Writ of Certiorari to the Supreme Court of Pennsylvania to review a final judgment of that Court entered on May 27, 1942, rehearing denied June 29, 1942, reversing judgment of the Court of Common Pleas of Luzerne County, Pennsylvania, entered on December 31, 1941.

OPINIONS BELOW.

The Opinion of the Court of Common Pleas, (R. pp. 249a-276a, 298a-302a) is not reported. The opinion of the Supreme Court of Pennsylvania (R. pp. .....) is reported in 345 Pa. State Reports, Page 19, 26 Atl. 2nd, 665.

JURISDICTION.

The judgment of the Supreme Court of Pennsylvania, which petitioner seeks to have reviewed, was filed May

27, 1942. Petition for rehearing was denied June 29, 1942, (R. p. ....).

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code as amended, 28 U. S. C. 344.

THE STATUTE INVOLVED.

The statute involved is the Bankruptcy Act of 1898, Sec. 5, July 1, 1898 c. 541, Sec. 5, 30 Stat. 547, 11 U.S.C. Sec. 23; and Sec. 70, July 1, 1898 c. 541, Sec. 70, 30 Stat. 565; Feb. 5, 1903, c. 487, Sec. 16, 32 Stat. 800; May 27, 1926, c. 406, Sec. 16, 44 Stat. 667, 11 U.S.C. Sec. 110.

Said sections of the Bankruptcy Act are printed in the appendix, infra, pages 19-22.

QUESTIONS PRESENTED.

The question is:

Whether title to individual real estate of a partner vests in the Trustee in Bankruptcy of the partnership as of the date the petition in bankruptcy is filed against the partnership, so that thereafter said partner cannot convey valid title thereto to a person other than a bona fide purchaser for value without notice?

The Supreme Court of Pennsylvania answered in the negative.

STATEMENT.

In 1933 and for many years previous, Fred S. Post, Mary Post Williams, Helen Post Morris and Mrs. Frank H. Post, (Martha L. Post), had been co-partners, trading as Post and Company in the City of Knoxville, Tennessee. The active partner was Fred S. Post. In the summer of 1933 the firm got into financial difficulty, a judgment being entered against it, and in November Fred S. Post advised his partners, including Martha L. Post, that bankruptcy was imminent (R. p. 212a). At that time Martha L. Post owned individually the real estate involved in this case located in West Pittston, Luzerne County, Penna., and 58 shares of stock in the First National Bank of Pittston. After learning of the imminent bankruptcy of Post and Company, she consulted a lawyer in Knoxville, Tennessee, and thereafter, on November 16, 1933, assigned the stock to her niece, Lucy McCabe Richards, and by deed dated December 1, 1933, attempted to convey the real estate to the Respondent. This was done to "save" her property from the creditors of Post and Company (R. p. 212a). The Respondent knew of the bankruptcy (R. p. 127a), and knew the purpose of the transfer (R. p. 126a). The conveyance of the real estate preserved a life estate in Martha L. Post and was made without actual consideration (R. p. 257a).

On November 27, 1933, four days before the execution of the deed to the Respondent, petition in bankruptcy was filed against the partnership and against Fred S. Post, individually, in the District Court of the United States for the Eastern District of Tennessee, Northern Division, to No. 7434 in Bankruptcy. On the same day an Answer was

filed for the partnership by Fred S. Post, admitting insolvency and inability to pay its debts. A Receiver was appointed and on December 19, 1933, the partnership was duly adjudicated bankrupt. On January 4, 1934, Sam Huffaker was elected Trustee and qualified as such. A lawyer, Neal B. Spahr, repeatedly appeared at hearings as "attorney for the bankrupts" (R. p. 307a). In the course of the administration of the estate of Post and Company, claims of unsecured creditors were filed and allowed in the sum of $19,515.74 (R. p. 309a). Dividends aggregating 14.072% were allowed and paid leaving a balance due and payable to unsecured creditors of $16,769.52. On February 7, 1935, the final account of the Trustee was approved and the Trustee discharged.

Martha L. Post died testate on January 7, 1935 and said Helen Post Morris was appointed Administratrix c.t.a. (R. p. 310a). In the administration of her estate there was a balance of $1305.42 for distribution to the creditors of Post and Company and the Administratrix has agreed to turn this sum over to the Trustee of Post and Company (R. p. 213a). Neither the real estate here involved nor the bank stock were administered as assets of the decedent's estate.

Several months later, about August, 1935, it came to the knowledge of the Reconstruction Finance Corporation, a creditor of Post and Company, that said partner, Martha L. Post, had been the owner of the real estate involved in this case and that a deed for said property, dated December 1, 1933, purporting to convey the real estate to her niece, Rose McCabe Hoover, the Respondent, had been recorded in Luzerne County on December 6, 1933. It was also discovered that the said Martha L. Post had been the owner of the shares of bank stock referred to above and had assigned the same to another niece, Lucy McCabe Richards, on November 16, 1933.

Statement

On November 9, 1935, the Reconstruction Finance Corporation filed a petition in the District Court of the United States for the Eastern District of Tennessee setting forth that these conveyances had been made, averring that they were in fraud of creditors and asking that the bankruptcy proceedings be reopened and that action be taken to recover the said property for the benefit of creditors. An order was duly entered reopening the case and at a meeting of creditors on November 21, 1935, the petitioner was elected Trustee and an Order was made by the Referee authorizing and directing the Trustee to institute proceedings for the recovery of the said real estate and of the bank stock. Thereupon, the Trustee commenced this suit on December 30, 1935 for the recovery of the real estate and instituted a separate action for the recovery of the bank stock. There was no ancillary administration of the estate of Martha L. Post, deceased, in Luzerne County, Pennsylvania, and no suit was started by the petitioner herein against that estate.

This suit was started by Bill in Equity against Rose McCabe Hoover, the Respondent, praying for a Decree that title to the real estate involved in this case be declared to have vested in the Trustee in Bankruptcy of Post and Company as of November 27, 1933, the date upon which petition in bankruptcy was filed against Post and Company, and that the deed from Martha L. Post to the Respondent be declared fraudulent, null and void as to the creditors of Post and Company and as to the petitioner (R. p. 53a). The husband of the Respondent, Harry C. Hoover, and Socony Vacuum Oil Company, were later added as defendants by amendment. Preliminary objections to the Bill in Equity were filed and dismissed. Answers were filed by the Respondent and the other Defendants. After trial before Hon. John S. Fine, the Bill was dismissed as to Harry C. Hoover, (who has since died), and the Socony

Vacuum Oil Company, lessee of the premises from the Respondent, and a Decree was entered adjudging that the conveyance of said real estate to the Respondent, Rose McCabe Hoover, was null and void, that title to said real estate vested in the Trustee in Bankruptcy of Post and Company as of November 27, 1933, and directing that the Respondent, Rose McCabe Hoover, account for rents received. Exceptions to this decree were filed by the Respondent and were overruled by the Court en banc of Luzerne County. Thereupon, the Respondent appealed from the Final Decree of the Court of Common Pleas to the Supreme Court of Pennsylvania and after argument, the Supreme Court of Pennsylvania reversed the Decree of the Court of Common Pleas at the cost of the petitioner. Petition for rehearing was duly filed by the petitioner and rehearing was denied by Order dated June 29, 1942 (R. pp. .....).

SPECIFICATION OF ERRORS TO BE URGED.

The Supreme Court of Pennsylvania erred:

1. In holding that upon adjudication of a partnership as bankrupt, only the assets of the partnership vest in the trustee in bankruptcy as of the date of the filing of the petition in bankruptcy against the partnership, and not the assets of the individual partners.

2. In holding that a member of a bankrupt partnership may convey his property to a third person having knowledge of the bankruptcy proceedings without consideration for the purpose of placing such property beyond the reach of the creditors of the partnership and that the Bankruptcy Act affords the trustee in bankruptcy of the partnership no remedy for the recovery of such property from the grantee thereof.

3. In holding that the only remedy available to partnership creditors for the recovery of property of a partner which has been transferred after the bankruptcy of the partnership is to bring separate proceedings in equity against the partner and the transferee to set aside the transfer as fraudulent.

REASONS FOR GRANTING THE WRIT.

The discretionary power of this Court to grant the writ requested is invoked because the Supreme Court of Pennsylvania has decided important questions of federal law in conflict with applicable decisions of this Court and of other federal courts.

I.

In deciding the case at bar the Supreme Court of Pennsylvania said:

> "The pivotal question is whether by virtue of the provisions of Section 5 of the Bankruptcy Act of 1898, 11 U.S.C.A., sec. 23, the title to the separate estate of an alleged partner vests in the trustee upon the filing of an involuntary petition later granted praying for the adjudication as a bankrupt of the partnership alone, where 'the petition and subpoena' or other process was never served upon the alleged partner either in the partnership proceedings or in any individual proceedings."

The Court answered this question in the negative and on the basis of its answer, reversed the Court of Common Pleas and directed judgment to be entered in favor of the Respondent. Various other aspects of the case were discussed by the Court but its decision was clearly based on its opinion that title to the individual property of a partner does not pass to the trustee in bankruptcy of a partnership as of the date when a petition in bankruptcy is filed against the partnership. The membership of Mar-

tha L. Post in the partnership of Post and Company was not only established by the Petitioner's evidence but was admitted by the Respondent (R. pp. 128a, 129a). That she had knowledge of the bankruptcy proceedings at the time they were commenced and made no objection to the proceedings was also established (R. pp. 204a, 216a). As a matter of fact, the record clearly shows that the purpose of the conveyance sought to be set aside was to place the property in question beyond the reach of the creditors of Post and Company (R. pp. 115a-130a; 137a-146a).

If the Court below had decided that title to Mrs. Post's property passed to the trustee of Post and Company when bankruptcy proceedings were started against the firm, ultimate recovery of the property by the trustee would be inevitable. Any defects in procedure or pleading could be corrected by amendment or even by the commencement of a new action. We respectfully submit, therefore, that this case was decided by the Court below solely on the basis of its answer to the federal question involved, to wit: Does title to the property of a partner pass to the trustee in bankruptcy of a partnership as of the date when petition in bankruptcy is filed against the partnership?

II.

The decision of the lower Court on the above question is in conflict with the express provisions of Section 5 and Section 70 of the Bankruptcy Act of 1898, with the decision of this Court in *Francis v. McNeal,* 228 U. S. 695, and with the decisions of the Federal Courts and State Courts to which reference is hereinafter made.

Section 5 of the Bankruptcy Act of 1898 provides, inter alia, that a partnership may be adjudged a bankrupt as a separate entity. It also provides that "The Court of

Bankruptcy which has jurisdiction of one of the partners may have jurisdiction of all the partners and of the administration of the partnership and individual property."

The decision of this Court in *Francis vs. McNeal, supra,* was based upon the provisions of Section 5 of the Bankruptcy Act. The case was before the Court on appeal from the Circuit Court of Appeals for the Third Circuit. The decision of the Circuit Court of Appeals is reported in 186 Fed. 481.

In that case the partnership and two of its three members had been adjudged bankrupt. The Trustee in Bankruptcy of the partnership petitioned the Bankruptcy Court for an order on the partner who had not been adjudicated to deliver his property to the Trustee for the purpose of administration. The unadjudicated partner contended that since he had not individually been adjudged a bankrupt his estate could not be administered in bankruptcy. The Circuit Court of Appeals held that a partnership is an entity which may be adjudged a bankrupt irrespective of an adjudication against any of its members and also held that the above sections of the Bankruptcy Act clearly provide for the administration of partnership and individual property by the Trustee of a bankrupt partnership. The Court also held that Subsection (h) of Section 5 applied only where the partnership itself was not adjudicated bankrupt but some, not all, of the partners had been adjudicated. The Court thereupon overruled all of the defendant's contentions and affirmed the Order of the District Court requiring the defendant to deliver his property to the Trustee. In the course of the opinion, the Circuit Court of Appeals said at page 485:

> "In our opinion, the subdivisions of section 5 preceding subdivision 'h' mean that a partnership is a legal entity that may be adjudged a bankrupt, irrespec-

tive of an adjudication against any of its members; that it may be so adjudged either in a voluntary or an involuntary proceeding; that in an involuntary proceeding, where the act of bankruptcy charged does not involve insolvency of the partnership, and where there is an adjudication against the partnership only, probably nothing is involved but partnership assets; that in an involuntary proceedings, where the act of bankruptcy charged is one that does involve insolvency of the partnership, there can be no adjudication against the partnership, unless it and all its members are insolvent; and that in such a case, though the adjudication be against the partnership only, or against the partnership and some, but not all, of its members, the estates of all the members are drawn into the proceeding for administration. If section 5 be thus construed, a partnership, which has been adjudged a bankrupt on the ground that it has committed an act of bankruptcy involving insolvency, will be wound up in accordance with the equitable principles adopted by that section and by section 36 of the Act of 1867. Under the act of 1867, every member of a bankrupt partnership was compelled to deliver his individual property to the trustee of the partnership for administration. We find nothing in the present act that confers upon an unadjudicated member of a partnership, which has been adjudged a bankrupt on a ground involving insolvency, the right to withhold his individual property from such a trustee."

This Court affirmed the Circuit Court of Appeals in every particular, holding that the adjudication of a partnership bankrupt upon an involuntary petition necessarily required the finding that the individual partners as well as the partnership were insolvent, stating, "* * * we should infer from Section 5 clauses (c) through (g), that the as-

sumption of the Bankruptcy Act was that the partnership and individual estates both were to be administered, and that the only exception was that in (h), 'In the event of one or more, but not all, of the members of a partnership being adjudged bankrupt' * * *".

In its opinion, this Court disapproved the opinion of the majority of the Circuit Court of Appeals in the case of *In Re Bertenshaw,* (C. C. A. 8) 157 Fed. 363, in which it had been held that the Trustee of the partnership had no jurisdiction over the property of the individual partners, and it approved the opinion of the Circuit Court of Appeals in *Vaccaro vs. Security Bank* (C. C. A. 6) 103 Fed. 436, in which the conclusions were the same as those of the Supreme Court. The following cases illustrate the application of the doctrine announced in Francis vs. McNeal and in many of them orders were made upon the unadjudicated partners to turn over their assets to the Trustee. *Menke vs. Sunderman,* (C. C. A. 3) 186 Fed. 486; *Dickas v. Barnes,* (C. C. A. 6), 140 Fed. 849; *In Re Hurley Mercantile Co.,* (C. C. A. 5) 56 F. (2nd) 1023; *In Re Hansley & Adams* (D. C. Cal.) 228 Fed. 564; *In Re Stokes,* (D. C. Pa.) 106 Fed. 312; *In Re Meyer,* (C. C. A. 2) 98 Fed. 976; *In Re Sitnek,* (D. C. Pa.) 52 F. (2nd) 861.

In *Carter vs. Whisler,* (C. C. A. 8), 275 Fed. 743, a petition in bankruptcy was filed against the firm in Montana with service on one of the partners. The other partner was in Iowa and no service was made on him. The partnership was adjudicated bankrupt in the District Court in Montana and ancillary proceedings were brought by the trustee in the District Court of Iowa to compel the partner there to file schedules of his assets in the bankruptcy proceedings against the partnership. The Court held that personal service on the one partner gave the Court jurisdiction over all the partners and of the administration of the partnership and the individual property. The Court said at page 746:

"The Trustee in Bankruptcy by the adjudication became vested with the title to the bankrupt's property, wherever situated in the United States (citing cases). The adjudication of the firm a bankrupt *vested in the trustee title to the property of the individual partners,* as well as the firm property, notwithstanding the fact that some members of the firm were not adjudicated bankrupt. Francis v. McNeal, 228 U. S. 695, affirming 186 Fed. 481; Menke v. Sunderman, 186 Fed. 486; Abbott vs. Anderson, 265 Ill. 285, 106 N. E. 782; New Orleans A. Etc. Co. v. Guillory, 117 La. 821, 42 Southern 329; In re Latimer, (D. C.) 174 Fed. 824; Vaccuro v. Security Bank of Memphis, 103 Fed. 436; In re Samuels (D. C.) 207 Fed. 195".

In *Armstrong vs. Fisher* (C. C. A. 8), 224 Fed. 97, at page 99, the Court asked itself the question: "May a court of bankruptcy which has adjudged a partnership, composed of two members, and one of its members, bankrupt, draw to itself and administer the property of the other member, and require him to file a list of his individual creditors and a schedule of his assets?" The Court answered the question in the affirmative, held that the case is not covered by Section 5 (h) which applies only where the partnership is not adjudicated bankrupt but some, and not all, of the partners are adjudicated and also held that the failure of the individual partner who was not adjudicated to object to the administration of the partnership property in bankruptcy and himself to settle the partnership business, estops him from successfully claiming that his individual estate could not be drawn into and administered by the Bankruptcy Court.

III.

The lower Court based its decision of the question involved on the cases of *Liberty National Bank v. Bear,* 276 U. S. 215; *First National Bank of Herkimer v. Poland Union,* (C. C. A. 2) 109 Fed. (2nd) 54, and *Credito Y. Ahorro Ponceno v. Gorbia* (C. C. A. 1) 25 F. (2nd) 817. In doing so, the Court overlooked the fundamental difference between the case at bar and the cases relied upon. In the present case the alleged rights of the Respondent arose *after* the petition in bankruptcy was filed. In all of the cases relied upon by the Court below, the rights of the Respondent arose *before* the petition in bankruptcy was filed. Relief was denied to the Trustee in those cases because the preferences and fraudulent conveyances attacked were not made by the bankrupt partnership but by members of the firm who were not adjudicated bankrupt and were made *before* the bankruptcy proceedings against the partnership was commenced. In the case at bar, the deed of Martha L. Post to the Respondent was made four days after the bankruptcy petition was filed against the partnership. Clearly, cases involving transfers made before the bankruptcy of the partnership can have no application to a case involving a transfer made after the bankruptcy of the partnership. The decisions in the cases relied upon by the lower Court turned on the question whether a Trustee in bankruptcy of a partnership could avoid preference and fraudulent transfers made by a partner, under the provisions of Sections 60 and 67 of the Bankruptcy Act. In the case at bar, the petitioner does not rely on these provisions of the Bankruptcy Act but upon Sections 5 and 70 of the Act. In other words, this is a proceedings to remove a cloud upon the petitioner's title to property which vested in him upon the filing of the petition in bankruptcy and is not a suit to recover a preference or to avoid a fraudulent transfer, made before the filing of the petition.

IV.

Although in its decision in the case of Francis v. McNeal, this Court did not state in so many words that title to an unadjudicated partner's property passes to the trustee in bankruptcy of a partnership as of the date bankruptcy proceedings are commenced, we respectfully submit that the decision necessarily implied such doctrine and the decision has been accepted by the courts as authority for such doctrine. In Francis v. McNeal this Court held that a Trustee in bankruptcy of a partnership may compel a partner to surrender his individual property to the Trustee by *summary proceedings for a turnover order.* Summary proceedings for a turnover order are permissible only as to the property which comes into the custody, actual or constructive, of the bankruptcy court on the date when bankruptcy proceedings are commenced. 2 *Collier on Bankruptcy,* 14th Ed. 447 et seq. If, as was stated by the lower Court in the present case, the Trustee of a bankrupt partnership is entitled only to such of a partner's property as the partner may have at the time the Trustee seeks to recover such property, then clearly, turnover proceedings would not be a permissible remedy.

The lower Federal Courts have consistently upheld the summary jurisdiction of the Bankruptcy Court to order an unadjudicated partner to surrender his property to the trustee of the partnership for administration. In *In re Meyer, supra,* (C. C. A. 2) summary proceedings were upheld. In *In re Stokes, supra,* (D. C.), the same result was reached as to an assignee of an unadjudicated partner. In *Menke vs. Sunderman, supra,* (C. C. A. 3) it was held that a Bankruptcy Court may order sale of the individual property of a partner by the Trustee of a partnership without any prior proceedings to draw the property into the Bankruptcy Court for administration.

V.

In none of the cases which we have examined has the question as to the time when title to a partner's property vests in the Trustee of a partnership been directly at issue. As we have heretofore stated, the Courts, in the cases cited, have assumed that the partnership trustee's rights in a partner's property are the same as his rights in the property of the partnership. In none of the cases we have read has it been suggested that the rights of the partnership Trustee in the partner's property vest at a different time than his rights in the property of the partnership itself.

Section 70 of the Bankruptcy Act is the Section upon which reliance must be placed in all cases involving the question as to what property vests in the Trustee and as to when title vests in him.

Section 70 provides, inter alia, that the Trustee of the estate of a bankrupt shall be vested by operation of law as of the date he was adjudged a bankrupt to all, "(5) property which prior to the filing of the petition he could by any means have transferred or *which might have been levied upon and sold under judicial process against him.*"

It is respectfully submitted that this provision of the Bankruptcy Act establishes beyond question the contention of the petitioner in this case. Although a partnership could not voluntarily transfer the property of a partner, the property of a partner is subject to levy and sale under judicial process against the partnership. Whether property is subject to seizure and sale under judicial process must be determined by local law. *Hewit v. Berlin Machine Works,* 194 U. S. 296; *In re Butterwick* (D. C. Pa.) 131 Fed. 371; *In re Berry,* (D. C. Mich.) 247 Fed. 700. In Pennsylvania, where the real estate involved in this case is located, it is well settled that the property of a partner is

subject to seizure and sale for a debt of the partnership, provided the partner is named in the action against the partnership and served with process. *Walsh vs. Kirby,* 228 Pa. 194; *Hirsch v. Samulan,* 93 Pa. Super. Ct. 49; *Cummings's Appeal,* 25 Pa. 268; *Tonge v. Item Publishing Co.,* 244 Pa. 417; *Zwick v. West Park Cleaners & Dyers,* 98 Pa. Super. Ct. 498; *Harr vs. Dyer H. & Co.,* 30 Luz. L. R. (Pa.) 473 (1936).

It follows that to the extent that a partner's property could have been levied upon and sold under judicial process against the partnership, the partnership may be said to have had "title" to such property and under the provisions of Section 70, such title passes to the Trustee in bankruptcy of the partnership.

VI.

It is respectfully submitted that if the decision of the lower Court in this case is allowed to stand, a deliberate and purposeful fraud will be upheld and the law as to the administration of bankrupt partnerships will be thrown into confusion. The fraudulent nature of the transaction out of which this case arose is patent and is virtually undenied by the Respondent. Under the decision of the lower Court, a member of a bankrupt partnership might at any time before the Trustee actually takes control of his property, convey it away to a third person and such third person could retain it against the Trustee of the partnership.

Proper administration of bankrupt partnerships depends upon the ability of the Court to gather into the proceedings all the property liable for the debts of the partnership and of the individual partners. Otherwise, inequities as between creditors are bound to result. The

only effective way in which this result can be accomplished is to vest title to all such property in the Trustee of the partnership and adjust the rights of the various classes of creditors in the bankruptcy proceedings. This is what was contemplated by Congress in enacting Sections 5 and 70 and by this Court in *Francis v. McNeal, supra.*

CONCLUSION.

It is respectfully submitted that, for the reasons stated, this petition for a Writ of Certiorari should be granted.

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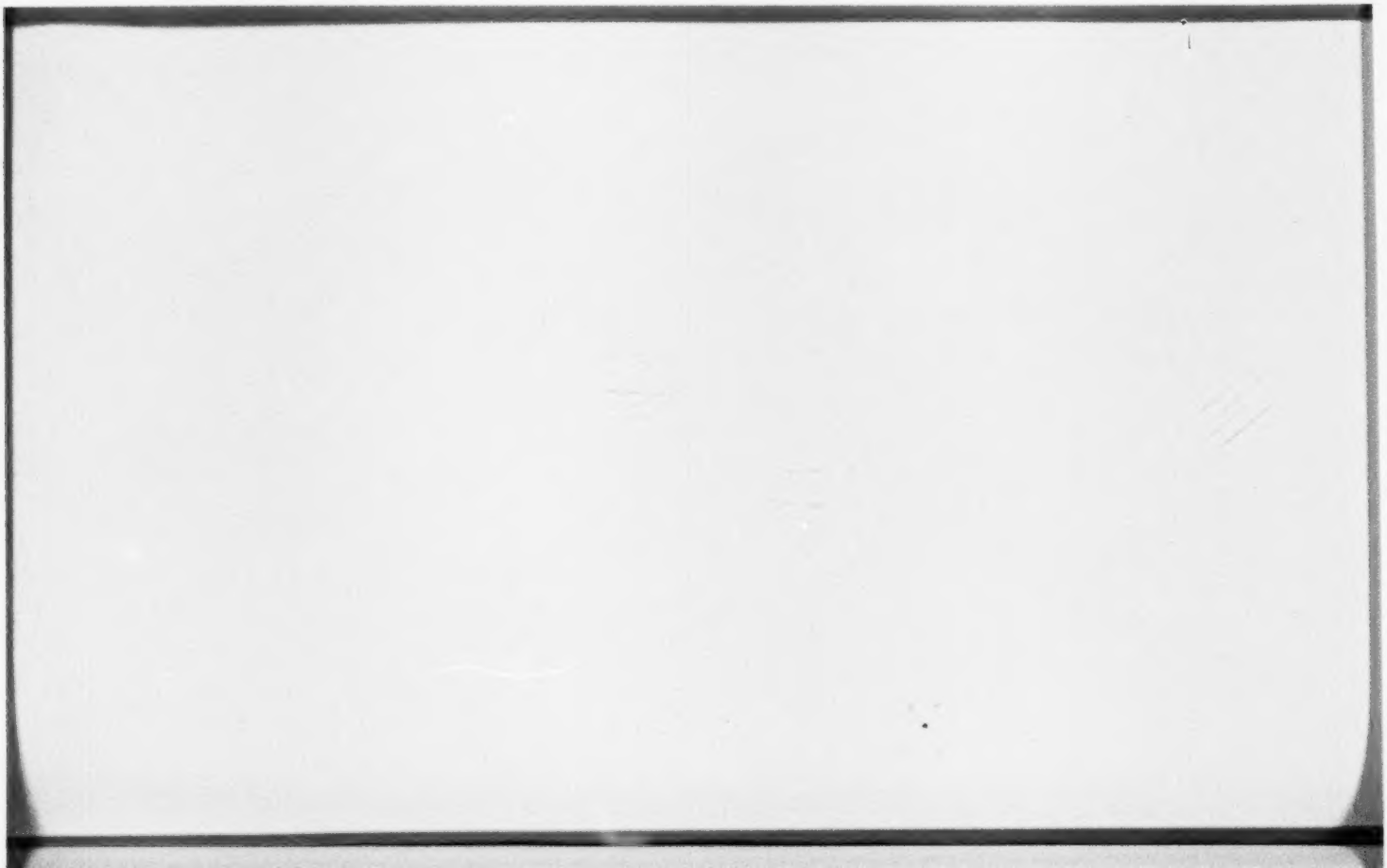

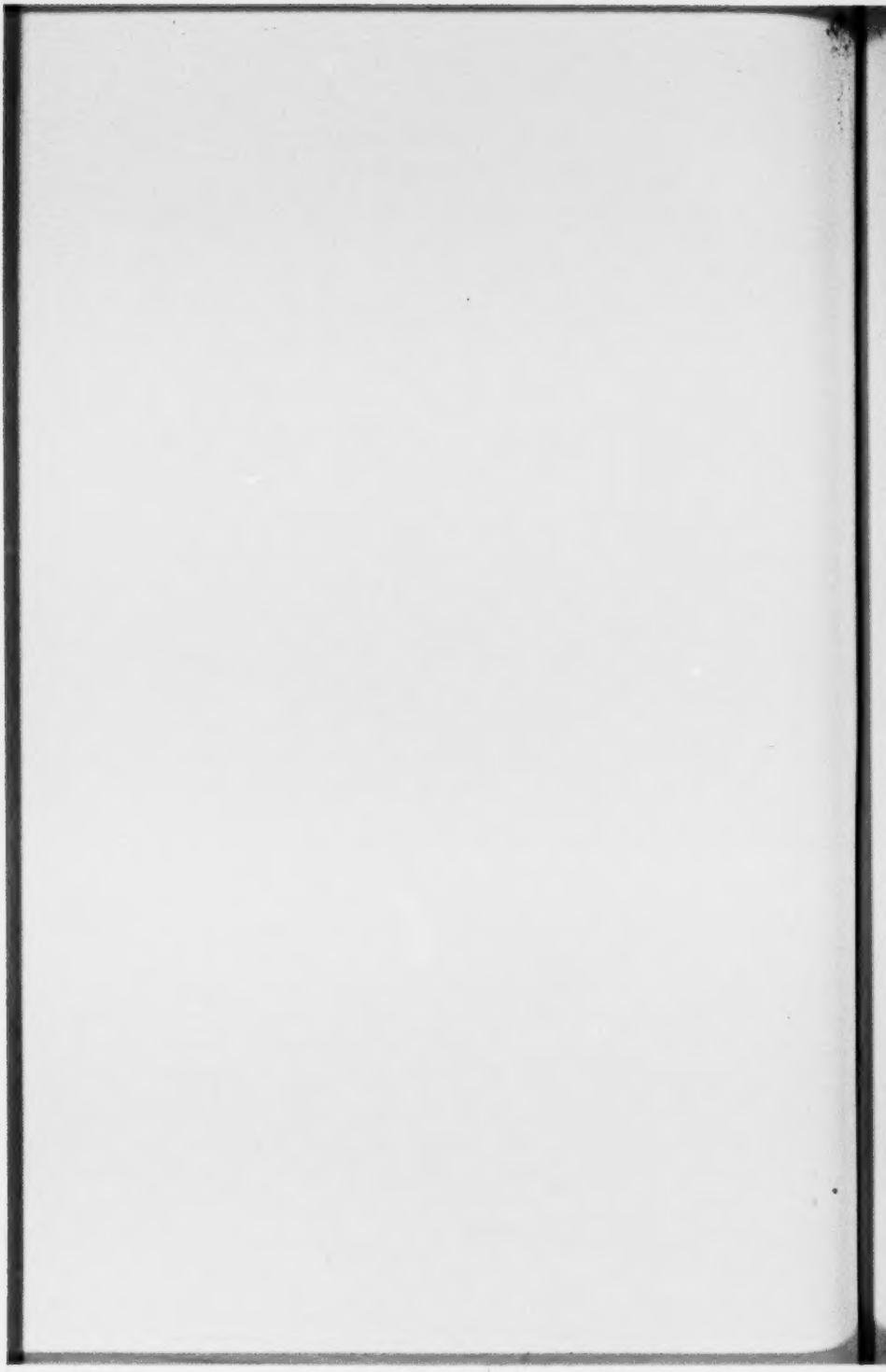

APPENDIX.

Section 5 of the Bankruptcy Act of 1898, Section 5, July 1, 1898 c. 541, Sec. 5, 30 Stat. 547, 11 U.S.C. Sec. 23.

PARTNERS.

23. PARTNERS.—a. A partnership, during the continuation of the partnership business, or after its dissolution and before the final settlement thereof, may be adjudged a bankrupt.

b. The creditors of the partnership shall appoint the trustee; in other respects so far as possible the estate shall be administered as herein provided for other estates.

c. The court of bankruptcy which has jurisdiction of one of the partners may have jurisdiction of all the partners and of the administration of the partnership and individual property.

d. The trustee shall keep separate accounts of the partnership property and of the property belonging to the individual partners.

e. The expenses shall be paid from the partnership property and the individual property in such proportions as the court shall determine.

f. The net proceeds of the partnership property shall be appropriated to the payment of the partnership debts, and the net proceeds of the individual estate of each partner to the payment of his individual debts. Should any surplus remain of the property of any partner after paying his individual debts, such surplus shall be added to the partnership assets and be applied to the payment of the

partnership debts. Should any surplus of the partnership property remain after paying the partnership debts, such surplus shall be added to the assets of the individual partners in the proportion of their respective interests in the partnership.

g. The Court may permit the proof of the claim of the partnership estate against the individual estates, and vice versa, and may marshal the assets of the partnership estate and individual estates so as to prevent preferences and secure the equitable distribution of the property of the several estates.

h. In the event of one or more but not all of the members of a partnership being adjudged bankrupt, the partnership property shall not be administered in bankruptcy, unless by consent of the partner or partners not adjudged bankrupt; but such partner or partners not adjudged bankrupt shall settle the partnership business as expeditiously as its nature will permit, and account for the interest of the partner or partners adjudged bankrupt.

Section 70 of the Bankruptcy Act of 1898, Sec. 70, July 1, 1898, c. 541, Sec. 70, 30 Stat. 565; Feb. 5, 1903, c. 487, Sec. 16, 32 Stat. 800; May 27, 1926, c. 406, Sec. 16, 44 Stat. 667, 11 U.S.C. Sec. 110. (Gilbert Collier on Bankruptcy, 1160, 1161).

TITLE OF PROPERTY

TITLE.—a. The trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempt, to all (1) documents relating to his property; (2) interests in patents, patent rights,

copyrights, and trade-marks, and in applications for patents, copyrights and trade-marks: PROVIDED, That in case the trustee, within thirty days after appointment, does not notify the applicant for a patent, copyright, or trade-mark of his election to prosecute the application to allowance or rejection, the bankrupt may apply to the court for an order revesting him with the title thereto, which petition shall be granted, unless, for cause shown by the trustee, the court grants further time to the trustee for making such selection; and such applicant may, in any event, at any time petition the court to be revested with such title in case the trustee shall fail to prosecute such application with reasonable diligence; and the court, upon revesting the bankrupt with such title, shall direct the trustee to execute proper instruments of transfer to make the same effective in law and upon the records; (3) powers which he might have exercised for his own benefit; but not those which he might have exercised for some other person; (4) property transferred by him in fraud of his creditors; (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him. When any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets; and (6) rights of action arising upon contracts or from the unlawful taking or detention of, or injury to, his property.

b. All real and personal property belonging to bankrupt estates shall be appraised by three disinterested appraisers; they shall be appointed by, and report to, the court. Real and personal property shall, when practicable, be sold subject to the approval of the court; it shall not be sold otherwise than subject to the approval of the court for less than seventy-five per centum of its appraised value.

c. The title to property of a bankrupt estate which has been sold, as provided in this title, shall be conveyed to the purchaser by the trustee.

d. Whenever a composition shall be set aside, or discharge revoked, the trustee shall, upon his appointment and qualification, be vested as provided in his title with the title to all of the property of the bankrupt as of the date of the final decree setting aside the composition or revoking the discharge.

e. The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a bona fide holder for value. For the purpose of such recovery any court of bankruptcy as defined in this title, and any State court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.

f. Upon a confirmation of a composition offered by a bankrupt, the title to his property shall thereupon revest in him. (Amended by Act of February 5, 1903, and by Act of May 27, 1926).

In The

Supreme Court of the United States

October Term, 1942 No. 428

O. M. TATE, JR., TRUSTEE IN BANKRUPTCY OF POST AND COMPANY, A CO-PARTNERSHIP CONSISTING OF FRED S. POST, MARY POST WILLIAMS, HELEN POST MORRIS AND MRS. FRANK H. POST, (MARTHA L. POST),
Petitioner

vs.

ROSE McCABE HOOVER,
Respondent

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1942, No. 428

O. M. Tate, Jr., Trustee in Bankruptcy of Post and Company, a Co-Partnership Consisting of Fred S. Post, Mary Post Williams, Helen Post Morris and Mrs. Frank H. Post (Martha L. Post),

Petitioner

vs.

Rose McCabe Hoover,

Respondent.

I.

COUNTER-STATEMENT OF THE CASE

The statement of the facts in the case by petitioner is inaccurate, incomplete and misleading, and furthermore, does not reflect the exact questions presented by the lower court. Both federal and non-federal questions were adjudged by the Pennsylvania State Court and the latter questions were sufficiently broad to sustain its judgment.

Petitioner on December 30, 1935, instituted an action in equity in Luzerne County, State of Pennsylvania, seeking to set aside and cancel a deed of conveyance, dated December 1, 1933, and recorded in Luzerne County Recorder's Office on December 6, 1933, given to respondent by her aunt, Martha L. Post, who died January 7, 1935, for

lands in the Borough of West Pittston, Luzerne County, Pa., on the ground that said conveyance, in the language of his Honor, John S. Fine, by whom as Chancellor, said action was tried and adjudicated, "was fraudulent as to creditors".

On November 2, 1911, a partnership known as Post and Company, consisting of Frank H. Post, his son, Fred S. Post, and R. W. Barton, was engaged in business in the City of Knoxville, State of Tennessee. On date last mentioned Frank H. Post died intestate, and left to survive him, his widow and second wife, Martha L. Post, and three children by his first wife, a son, Fred S. Post, and two daughters, Mary Post Williams and Helen Post, then a minor child, now Helen Post Morris. Though the death of Frank H. Post dissolved the partnership the business of the partnership was continued until November 27, 1933. The record does not disclose that the affairs of the partnership had ever been settled nor what became of the interest of R. W. Barton therein; nor does the record disclose whether the continuance of the enterprise after the death of Frank H. Post was for the benefit of the surviving partners and said decedent's estate or whether by agreement the property of the deceased member was to remain subject to the risks of the business and limited to the decedent's interest in the business as it existed at the time of his death. However, on November 27, 1933, three corporation alleged creditors of said alleged partnership, by their attorney (R. 69a), filed in the U. S. District Court for the Eastern District of Tennessee, Northern Division, located at Knoxville, Tennessee, an involuntary petition in Bankruptcy No. 7434 therein (which respondent contended did not aver any act which would constitute an act of bankruptcy) seeking to have said alleged partnership of Post and Company and said Fred S. Post (though no act of bankruptcy was in said petition alleged to have been

committed by him) and they only, adjudged bankrupts. Notwithstanding said petition prayed that service of said petition, with subpoena, be made upon Post and Company and Fred S. Post, no subpoena was ever issued in said involuntary bankruptcy proceedings, and no subpoena or copy of said petition, or any notice of said bankruptcy proceedings, was ever served upon said Martha L. Post individually or otherwise in her lifetime. Neither did she ever enter an appearance in said bankruptcy proceedings by counsel, or otherwise (R. 238a-212a).

Said petition averred that said co-partnership consisted of Fred S. Post, Mary Post Williams, Helen Post Morris and Mrs. Frank H. Post. As above indicated, said petition, (with the exception of said Fred S. Post and then in manner above set forth), did not seek to have the alleged members of said firm adjudged bankrupt as individuals. Admittedly no process or petition with subpoena, or any notice of said bankruptcy proceedings, was ever served upon Martha L. Post individually, or otherwise, and without any semblance of authority Fred S. Post filed an answer for said firm. No petition in bankruptcy was ever filed against Martha L. Post (Mrs. Frank H. Post) seeking to have her adjudged a bankrupt as an individual, and as admitted and averred by petitioner in the bill in equity filed by him (R. 22a) "said Mrs. Frank H. Post (Martha L. Post), an individual, was not adjudicated a bankrupt". Said bankruptcy proceedings were so proceeded in that on December 19, 1933, said firm of Post and Company was adjudged a bankrupt, and the Trustee in Bankruptcy Sam Huffaker having fully administered the estate of said Bankrupt, and his final account as such having been finally approved, he was discharged and the estate and proceedings marked "closed", February 7, 1935 (R. 20a).

On November 9, 1935, more than ten months after the

decease of Martha L. Post, on January 7, 1935, and more than nine months after the discharge of Sam Huffaker as said Trustee in Bankruptcy and the marking of said estate in bankruptcy of said partnership "closed", and after any right or interest said Trustee ever had, if any, in land conveyed to respondent had reverted to her as the grantee thereof from her aunt Martha L. Post on December 1, 1933, said U. S. District Court at Knoxville, Tennessee, without any notice to the personal representative of the estate of said Martha L. Post, or her devisees, or to respondent as devisee and grantee of said land, reopened said bankruptcy estate by an ex parte order upon the petition of petitioner acting as attorney for the Reconstruction Finance Corporation, for purpose, as stated in said order, of bringing into the estate and administering upon any assets not heretofore before the court and properly a part of the bankrupt estate. On November 21, 1935, petitioner was appointed Trustee in Bankruptcy of estate of said firm and later instituted said proceedings in equity on the date and for the purpose hereinbefore described. To said bill in equity respondent filed her answer denying that said Martha L. Post was ever a member of said partnership of Post and Company, and calling for proof of the alleged membership of Mrs. Post in said partnership, and objected to and denied the averments in said bill in equity as to alleged insolvency of Mrs. Post and as to the transfer to respondent of her property without consideration and to defraud the creditors of said partnership. Respondent in her said answer also challenged petitioner's right to maintain said equity action and the jurisdiction of the said U. S. Bankruptcy Court by reason of the clearly fatally defective character of said involuntary petition in bankruptcy, and denied that petitioner's alleged claim was a lien on the lands so conveyed to her by said Martha L. Post; averred that petitioner was guilty of laches in the

institution of said equity proceedings and that if his claim was ever a lien on lands so conveyed, it had expired and had not been continued, renewed, preserved or retained thereon as provided by law; that no suit had been brought against said Martha L. Post in her lifetime, nor against her personal representative after her death in Luzerne County, Pennsylvania, where land so conveyed was situated; that said U. S. District Court never acquired jurisdiction of said alleged bankruptcy proceedings by reason of the fatally defective character of bankruptcy petition, and that as a result thereof petitioner's appointment as Trustee in Bankruptcy was and is null and void, and that he was and is without authority or right to institute above entitled proceeding; that said proceeding was an attempt to administer and settle the individual estate of said Martha L. Post, deceased; that no notice was given to nor any process served upon said Martha L. Post, in her lifetime, or the personal representative of her estate after her death, of said bankruptcy proceedings; that petitioner's bill of complaint was not filed in good faith and that he did not come into said Court of Equity with clean hands, but at the instance of the law firm of Edgerton & McAfee, of counsel for petitioner, or said law firm's member or representative, James L. Clarke, who respondent, was advised and believed was counsel for estate of Martha L. Post, deceased, for pecuniary speculative purposes, and in order to extract, if possible, from what they contend is a part of estate of said decedent, moneys in the form of counsel fees, and otherwise (R. 58a). Respondent also filed an answer (R. 74a) to an amended bill of complaint of petitioner (R. 88a) setting forth substantially the same defenses under the head of new matter, and many of the questions raised in said answers so filed by respondent were previously set forth by respondent in the preliminary objections filed by her to

petitioner's original bill of complaint, which objections were dismissed (R. 56a-57a).

After hearing before His Honor, John S. Fine, acting as Chancellor, he decreed nisi, and finally for the Court en banc, that respondent surrender up and cancel the deed received by her for premises in question, and account to petitioner for all rents, issues and profits received by her out of said real estate since December 1, 1933. From said Final Decree respondent took an appeal to the Pennsylvania Supreme Court and said Court reversed the Decree of Luzerne County Common Pleas Court, sitting in equity, at the cost of petitioner, on May 27, 1942, and after denial by said Appellate State Court of petitioner's petition for rehearing on June 29, 1942, the latter makes the application for writ of certiorari now before your Honorable Court.

II.

ARGUMENT

In answer to petitioner's application for a writ of certiorari in instant case and the reasons by him set forth in support thereof, the respondent challenges the sufficiency of the petition for said writ and the reasons for granting the same contained therein, for the following reasons, to wit:

1. Because the question involved as presented in said petition is misleading, inaccurate and incomplete and fails to disclose the exact situation as it existed in the Supreme Court of Pennsylvania.

2. Because the question as presented by said petition does not reflect every important element involved therein or having a vital bearing thereon.

3. Because said petition does not aver nor affirmatively disclose that the determination or decision of said case required a decision of the question presented in said petition.

4. Because an examination of the record of said case, particularly that part thereof represented by Opinion of Supreme Court of Pennsylvania, will disclose that the decree or judgment of said Court rests on federal and non-federal grounds, in other words, grounds involving one or more federal questions, and grounds involving one or more purely state questions, and that the grounds independent of the federal question or questions are clearly and completely adequate and sufficient to sustain said decree or judgment.

5. Because the judgment of the State Court must be affirmed where, as here shown by the record, it sustained both of the two defenses to an action heard therein, one presenting federal questions and the other non-federal questions, where either defense was a complete bar and defense to said suit.

6. Because the United States Supreme Court can only look beyond the federal question when that has been decided erroneously and then only to see whether there are any other matters or issues adjudged by the state court sufficiently broad to maintain the judgment or decree, notwithstanding any error in the decision of the federal question.

7. Because, even if the record did not disclose upon which of two grounds the decree or judgment was based, where the ground independent of any federal question is sufficient in itself to sustain State Court judgment, said judgment will be affirmed.

(A)

IS THE QUESTION INVOLVED AS PRESENTED BY PETITION MISLEADING AND DOES IT REFLECT EVERY IMPORTANT ELEMENT INVOLVED THEREIN OR HAVING A VITAL BEARING THEREON AND DISCLOSE THE EXACT SITUATION AS IT EXISTED IN THE SUPREME COURT OF PENNSYLVANIA?

(Reasons 1 and 2, *supra*)

Respondent respectfully contends that the question involved as presented by said petition is misleading, inaccurate and incomplete, does not reflect every important element involved therein or having a vital bearing thereon,

and does not disclose the exact situation as it existed in the Supreme Court of Pennsylvania.

The question as presented by petitioner is (Page 2 of Petition):

> "Whether title to individual real estate of a partner vests in the Trustee in Bankruptcy of the partnership as of the date the petition in bankruptcy is filed against the partnership, so that thereafter said partner cannot convey valid title thereto to a person other than a bona fide purchaser for value without notice?"

Respondent respectfully submits in fairness to the Supreme Court of Pennsylvania that the foregoing question is clearly subject to the points of criticism hereinbefore enumerated, as are the "specifications of errors to be urged" appearing on Page 7 of Petition, because both disregard, if not conceal, among other things, the important elements and conditions existing before, and considered by, said Court as the basis of its decision of any federal question or questions by it passed upon, to wit: that in instant case the involuntary petition in bankruptcy filed against the so-called partnership of Post and Company did not therein seek to have Martha L. Post, alleged partner, adjudged a bankrupt, nor therein aver that as an individual she was insolvent or had committed an act of bankruptcy, and furthermore, as found by the trial court and the Pennsylvania Supreme Court (R. 238a, Opinion of State Supreme Court, 337) "no process or 'petition with subpoena' or any notice of these proceedings was ever served upon Martha L. Post individually, or otherwise", and "she was never adjudged a bankrupt". (R. 22a, Opinion of State Supreme Court, 346)

Said petition for writ of certiorari also entirely disregards the finding of the Supreme Court of Pennsylvania in

effect that the testimony and evidence in the instant case is insufficient to establish the fact that Martha L. Post was a partner and member of the co-partnership of Post and Company as continued after the decease of Frank H. Post, or that she was liable for the debts of said firm, which finding, independent and regardless of any federal question that might have been decided by said Court, constitutes a complete bar and defense to suit of petitioner.

The Supreme Court of Pennsylvania after quoting answers of Helen Post Morris and her brother, Fred S. Post, to interrogatories admitted by trial court as evidence over objections of respondent's counsel, in its opinion (R. 335a-336a) said:

> "The testimony quoted indicates the uncertainty of the nature of this partnership. It does not appear whether the continuance of the enterprise after Post's death was for the benefit of the surviving partners and the decedent's estate or whether by agreement the property of the deceased member was to remain subject to the risks of the business and limited to the decedent's interest in the business as it existed at the time of his death; See Wilcox v. Derickson, 168 Pa. 331, 31 A. 1080. The rights of subsequent creditors are controlled by the terms of the agreement of continuance and not by common law principles of partnership. If the agreement contemplates that the right of subsequent creditors shall be confined to the assets of the continued firm in so far as the decedent's estate is concerned, this intention forms the measure and extent of their rights. Third persons dealing with a continued enterprise are therefore bound to inquire as to the extent of the authority conferred by the continuation agreement, otherwise they extend credit at their own risk. See 1 Rowley, Partnership (1916)

Sec. 594; See also Warner Fuller, 50 Yale Law Journal 210, 20 R. C. L. Sec. 232, P. 995; 20 ed. 806, and the case of Cameron v. Nat'l Surety Co., 272 Fed. 874, 877, where the Circuit Court of Appeals (8th Cir.) held that: * * * Under the law, therefore, it cannot be said that Mary T. Cameron had any interest in the partnership property, *because the affairs of the partnership have never been settled,* and if it should be true that she had an interest in such property, *it would not establish the fact that she was a partner and liable for the debts of the firm.*"

See also *Brew v. Hastings,* 196 Pa. 230; *Allam's Estate,* 199 Pa. 579; *Meadville Savings Bank Estate,* 2 Pa. Sup. Ct. 618.

(B)

DOES THE PETITION AVER OR AFFIRMATIVELY DISCLOSE THAT THE DETERMINATION OR DECISION OF THE CASE REQUIRED A DECISION OF THE QUESTION PRESENTED IN SAID PETITION?

(Question or Reason 3, *supra*)

Respondent respectfully contends that Petition does not aver nor affirmatively disclose that the determination or decision of the case required a decision of the question presented in said petition.

In *Southern Power Company, Petitioner v. North Carolina Public Service Company,* 263 U. S. 508, the Court said inter alia:

> "Heretofore we have pointed out the necessity for clear, definite and complete disclosures concerning the controversy when applying for certiorari",

and in *The United States of America, Petitioner v. W. A. McFarland and J. Norris McFarland Co., Partners, Trading as Henry Marcus & Son (No. 157)*, 275 U. S. 485, the Court said per curiam on October 17, 1927:

> "The decision of the case does not require a decision of the questions which are presented in the petition for certiorari, because of which the writ was granted, and the certiorari heretofore granted in this case is, therefore, revoked upon the authority of Southern Power Co. v. North Carolina Pub. Serv. Co., 263 U. S. 508. * * *"

In *Thomas M. Lynch, et al. Commissioners, State Tax Commission, etc. vs. The People of the State of New York upon the relation of Elizabeth Pierson*, 293 U. S. 52-54, the Court said:

> "It is essential to the jurisdiction of this Court in reviewing a decision of a court of a State that it must appear affirmatively from the record not only that a federal question was presented for decision to the highest court of the State having jurisdiction but that the decision of the federal question was necessary to the determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it".

In *Castillo v. McConnico*, 168 U. S. on page 679 the Court said:

> "To decide the issue as to jurisdiction we will at the outset ascertain whether a Federal question was necessarily involved in the decision of the State Supreme Court. Even though it be that a federal question was decided, nevertheless, if the questions of a purely state character upon which the Supreme Court of Louisiana passed, are completely adequate to sus-

tain the decree by that court rendered, wholly independent of the Federal question, it will result that no Federal issue is presented for review. Egan v. Hart, 165 U. S. 188-191; Powell v. Brunswick County, 150 U. S. 433-441, and authorities therein cited. In Egan v. Hart, 168 U. S. 188, supra, the Court held that the 'Opinion of state court is to be treated as part of the record and it may be examined in order to ascertain the questions presented, as may also be the entire record, if necessary, to throw light on the findings' ".

(C)

WHERE AN EXAMINATION OF THE OPINION OF STATE SUPREME COURT AND THE ENTIRE RECORD DISCLOSES, AS IN INSTANT CASE, THAT SAID COURT SUSTAINED BOTH OF TWO DEFENSES TO AN ACTION HEARD THEREIN, ONE DEFENSE PRESENTING FEDERAL QUESTIONS, AND THE OTHER, NON-FEDERAL QUESTIONS, EITHER DEFENSE BEING A COMPLETE BAR AND DEFENSE TO THE SUIT, THE STATE COURT JUDGMENT MUST BE AFFIRMED

(Reasons 4, 5 and 6, *supra*)

In *Jenkins, Assignee v. Loewenthal & Another*, 110 U. S. 222, the Court said that,

"When the record discloses two defences to an action brought in a State Court, one presenting a federal question, and one presenting no federal question, either of which, if sustained was a complete defense to the suit, and the State Court gave judgement in favor of the defendant on both, and the case is brought

here by writ of error, the Court will affirm the judgment of court below without considering the federal question".

See also:

Hale v. Akers, 132 U. S. 554;
Eustis v. Bolles, 150 U. S. 361;
Farness W. & Co. v. Yang-Tsze Ins. Asso., 242 U. S. 430-461;
Layne & B. Corp v. Western Well Works, 261 U. S. 387;
Baldwin Co. v. R. S. Howard Co., 256 U. S. 35;
Giles v. Teasley Bd. of Registrars, etc., 193 U. S. 146;
Murdock v. Memphis, 20 Wall. 500;
Leathe v. Thomas, 212 U. S. 112;
McLaughlin v. Fowler, 154 U. S. 663;
DeLaussure v. Gaillard, 127 U. S. 216;
New Orleans Water Works v. Louisiana S. R. Co., 125 U. S. 18;
Joseph D. McGoldrick v. Compt. of New York, 309 U. S. 3.

Argument

(D)

"WHERE THE JUDGMENT OF THE STATE COURT RESTS ON TWO GROUNDS, ONE INVOLVING A FEDERAL QUESTION AND THE OTHER NOT, OR IF IT DOES NOT APPEAR UPON WHICH OF TWO GROUNDS THE JUDGMENT WAS BASED, AND THE GROUND INDEPENDENT OF A FEDERAL QUESTION IS SUFFICIENT IN ITSELF TO SUSTAIN IT, THIS COURT WILL NOT TAKE JURISDICTION. AS THE RECORD FAILS TO SHOW JURISDICTION IN THIS COURT, THE WRIT OF CERTIORARI IS DISMISSED AS IMPROVIDENTLY GRANTED."
Thomas M. Lynch, John J. Merrill and John P. Hennessey, as Commissioners Constituting the State Tax Commission of the State of New York, Petitioners vs. People of the State of New York upon the relation of Elizabeth Pierson,
293 U. S. 52-54

(Supporting Reason 7, *supra*)

The question as to whether the testimony and evidence disclosed by the record in instant case was insufficient to establish the fact that Martha L. Post, deceased, was a partner or member of the partnership of Post and Company, in her lifetime, hereinbefore discussed, and so decided in favor of respondent by State Supreme Court, respondent respectfully contends, was a question of a purely state character, and completely adequate to sustain the decree and judgment of the said Court, wholly independent of any Federal question, with the result that no Federal question is presented for review, under the authorities herein cited.

Respondent also respectfully contends that the ques-

tions as to whether the claim of petitioner as an alleged unsecured general creditor of the estate of Martha L. Post, deceased, was a lien on and against the real estate so conveyed to respondent by said decedent in her lifetime, or had lost its lien by reason of petitioner failing to comply with the mandatory provisions and requirements of the Pennsylvania Fiduciary Act of 1917, P. L. 447, as amended by the Act of June 7, 1919, P. L. 412, (See Opinion of State Supreme Court (R. page 350)) were questions of a purely state character and completely adequate when decided, as they were, in favor of respondent, to sustain the decree and judgment of said State Court, wholly independent of any Federal question, with the similar result that no Federal question is presented for review under the authorities herein cited.

For the reasons hereinbefore set forth, as well as other reasons appearing of record, and because the State and Federal Questions considered and decided by the State Supreme Court of Pennsylvania in instant case were rightly decided, respondent respectfully asks that the application of petitioner for a writ of Certiorari to said Court be denied.

Respectfully submitted,

W. L. PACE,
Counsel for Respondent.

Dated October 19, 1942.